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Filing date: **07/11/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048777
Party	Plaintiff adidas America, Inc.
Correspondence Address	JAIME RICH VINING FRIEDLAND VINING PA 1500 SAN REMO AVE, STE 200 CORAL GABLES, FL 33146-3606 UNITED STATES david.friedland@friedlandvining.com, jaime.vining@friedlandvining.com, trademarks@friedlandvining.com, dkf@friedlandvining.com, jrv@friedlandvining.co
Submission	Opposition/Response to Motion
Filer's Name	Jaime Rich Vining
Filer's e-mail	trademarks@friedlandvining.com, dkf@friedlandvining.com, jrv@friedlandvining.com
Signature	/Jaime Rich Vining/
Date	07/11/2013
Attachments	Motion with Exhibits.pdf(4148654 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

adidas America, Inc.,
Petitioner,

v.

**Michael D. Calmese and Laura Ann
Fisher,**
Registrants.

Cancellation No.: 92048777
Registration No.: 2,202,454
Registration Date: November 10, 1998
Mark: **PROVE IT!**

**PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO
REGISTRANTS' MOTION TO DISMISS AND FOR SANCTIONS**

Petitioner adidas America, Inc. ("adidas") respectfully submits this memorandum in opposition to the "Motion to Dismiss Laura Fisher as a Party Defendant Pursuant to the May 3, 2013 Assignment and Motion for Sanctions" (the "Motion") filed by Registrants Michael D. Calmese ("Calmese") and Laura Ann Fisher ("Fisher")(collectively, "Registrants") on June 22, 2013.¹

I. INTRODUCTION

Calmese continues to raise unmeritorious claims and disregard the rules of the Board. Registrants' Motion is the most recent and egregious example of such conduct. As discussed below, Registrants' Motion is rife with contradictions and empty rhetoric. The Motion is premised on the unsubstantiated allegation that adidas has intentionally and tortiously interfered with a "contractual business relationship" between Calmese and Fisher by mailing the required service copy of adidas's April 4, 2013 Notice of Status to Calmese and Fisher, as then-assignee of the captioned trademark registration. As

¹ adidas notes that Registrants filed the Motion during a time when this proceeding is suspended.

discussed below, Registrants' Motion is frivolous and harassing of adidas, insofar as Calmese continues to raise inappropriate and baseless claims against adidas. Based on Registrants' defamatory accusations and misconduct, adidas respectfully requests that the Board strike and refuse to consider Registrants' Motion.

II. FACTUAL BACKGROUND

On May 12, 2011, the district court in the District of Oregon, following the close of trial, ordered Calmese to reimburse adidas for certain of its attorneys' fees, in the amount of \$75,000. The Ninth Circuit affirmed this fee award on April 8, 2013². Since the district court granted adidas's Motion for Attorneys' Fees and Non-Taxable Expenses, Calmese and Fisher have apparently engaged in their version of a corporate shell game in an effort to avoid collection by adidas.

Specifically, after the Ninth Circuit initially affirmed the attorneys' fees award but while his reconsideration request to the Ninth Circuit was pending, Calmese assigned U.S. Trademark Registration No. 2,202,454 (the '454 Registration) for PROVE IT! on December 22, 2012 to Fisher and recorded this trademark assignment with the U.S. Patent & Trademark Office (the "PTO"). A copy of the December 22, 2012 assignment is attached hereto as "Exhibit A."

On April 8, 2013, after adidas brought the assignment to the Board's attention in connection with its filing of a required status update, Fisher assigned fifty percent (50%) of the "interest and goodwill" of the '454 Registration back to Calmese. Calmese

² Calmese sought reconsideration of the Ninth Circuit's November 21, 2012 Order affirming the District of Oregon's decision. On April 8, 2013, the Ninth Circuit denied Calmese's reconsideration request.

recorded this second assignment, which provides that Calmese “was only supposed to assign 50% of the Trademark Assignment to Laura Fisher on 12/22/2012,” with the PTO on April 8, 2013. In this second assignment, a copy of which is attached hereto as "Exhibit B," Fisher “clarifies for this record that her initial goal was to only acquire 50% of said registered trademark and not get attacked, intimidated, sued and/or harassed by adidas or its legal counsel...”

On April 29, 2013, the Board, *sua sponte*, joined Fisher as a party defendant to this cancellation proceeding, presumably based on her position as assignee. Fisher subsequently assigned her remaining 50% ownership in and to the ‘454 Registration back to Calmese on May 3, 2013. In the *third* Trademark Assignment, a copy of which is attached hereto as "Exhibit C," Calmese asserts that he “**IS NOT** desirous of this May 3, 2013 Assignment, but in light of the intimidating April 6, 2013, [sic] legal documents concerning a matter Fisher was not named in and the TTAB dubious decision to add Fisher to a suspended proceeding....Calmese is now forced to retain Fisher’s 50% interest and ownership of said registered trademark...” (emphasis in original).³

In the Motion, Registrants boldly postulate that adidas’s mailing of the service copy of its April 4, 2013 Notice of Status to both Calmese and Fisher, as assignee, demonstrates adidas’s “unethical and illegal tactics” and constitutes “intentional

³ In view of the fact that, as a result of the May 3, 2013 assignment, Ms. Fisher no longer holds an ownership interest in the '454 Registration, adidas does not object to the Board's removal of her as a party to this proceeding.

interference” with Fisher and Calmese’s “contractual business relationship.”⁴ Motion, pp. 6-8 (“Undisputed Facts”). Moreover, Registrants request, without any legal or factual support, that the Board

not only issue the ultimate sanction and order adidas not only pay Mr. Calmese back the lost May 3, 2013 revenue from Laura Fisher, but that the Board also issue an order preventing adidas from collecting any attorney fees or costs as a direct result of this tortious interference and that adidas be liable for any outstanding attorney fees and costs that are connected to or rely [sic] on this civil litigation involving adidas and Mr. Calmese.

Motion, p. 9. Registrants urge the Board that these “sanctions” will “protect Mr. Calmese, [t]he Board and [t]he U.S. Supreme Court.” Registrants’ wild accusations and demands upon the Board epitomize the difficulties of litigating against Calmese.

III. ARGUMENT

As a preliminary matter, adidas expressly denies all of the unfounded and defamatory accusations set forth in the Motion. The cumulative incredibility of Registrants’ arguments and accusations commands that their Motion be rejected in its entirety.

With respect to Registrants’ repeated requests for reimbursement for the alleged damages suffered and the costs and attorneys’ fees incurred⁵, Registrants clearly misunderstand the function of the Board. Section 502.05 of the Trademark Trial and

⁴ According to Calmese’s testimony in the underlying civil action, Ms. Fisher is his fiancée. See Exhibit D attached hereto.

⁵ Registrants appear *pro se* so their inappropriate demand for attorneys’ fees is further puzzling. The principle that a pro se litigant who is not a lawyer is not entitled to attorneys fees ... is not disputed. *See, Gonzalez v. Kangas*, 814 F.2d 1411 (9th Cir.1987); *Smith v. DeBartoli*, 769 F.2d 451 (7th Cir.1985); *Owens-El v. Robinson*, 694 F.2d 941 (3d Cir.1982).

Appeal Board Manual of Procedure (“TBMP”) explicitly provides that “[t]he Board will not hold any person in contempt, or award attorneys’ fees, other expenses, or damages to any party.” Clearly, this is not the appropriate forum to air, much less adjudicate, Registrants’ inappropriate (and meritless) accusations that adidas has engaged in unethical or unlawful behavior or Calmese’s complaints regarding his prior counsel and a purported malpractice dispute. *See Poindexter v. Ballard*, Cancellation No. 9204612, 2008 WL 2817759 (Trademark Tr. & App. Bd. July 11, 2008) (“Respondent also requested damages and attorney’s fees, which the Board has no authority to grant.”).

In the present situation, adidas, in response to a Board Order, advised the Board as to the status of two matters: (a) the status of the civil action between adidas and Calmese and (b) the ownership of the registration at issue in this proceeding, namely the fact that Calmese had divested himself of his interest in the registration by assigning it to Ms. Fisher. adidas did nothing other than provide the Board information that enabled the Board to determine whether or not to resume proceedings in this matter. Such conduct is not legally actionable and clearly, in the context of a Board proceeding, not sanctionable.

The Board does, however, have the discretion and inherent power to impose sanctions, for among other things, “filings that are presented to the Board ‘for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.’” *Carrini, Inc. v. Carla Carini S.R.L.*, 2000 TTAB LEXIS 728, *11-12 (TTAB Oct. 31, 2000)(citing Fed.R.Civ.P. 11 and Trademark Rule 2.116).

Registrants’ Motion is unwarranted and oppressive. Moreover, their vexatious litigation tactics and contentious posturing unnecessarily drains the resources of both the parties

and the Board.⁶

IV. CONCLUSION

Accordingly, and in the interest of judicial restraint and discretion, adidas respectfully requests that the Board enter an order striking Registrants' Motion and reminding Registrants of the appropriate conduct of practitioners before the Board.

Date: July 11, 2013

Respectfully submitted,

FRIEDLAND VINING, P.A.

s/David K. Friedland
David K. Friedland
Jaime Rich Vining
1500 San Remo Ave., Suite 200
Coral Gables, FL 33146
(305) 777-1720 – telephone
(305) 456-4922 – facsimile
e-mail: dkf@friedlandvining.com
e-mail: jrv@friedlandvining.com

*Attorneys for Petitioner
adidas America, Inc.*

⁶ In its April 29, 2013 Order, the Board further suspended this proceeding, ruling that "proceedings in this Board case remain suspended pending final determination of the civil action, including joint respondent Mr. Calmese's (presumptive) appeal to the Supreme Court." As of the filing date of this opposition, which is subsequent to Calmese's deadline to appeal to the Supreme Court, adidas has not been served with any such appeal. Accordingly, adidas submits that resumption of this proceeding is now appropriate. *See* Trademark Rule 2.117(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **NOTICE OF STATUS** was served upon Registrants by delivering a true and correct copy of same via U.S. Mail on July 11, 2013 as follows:

Laura Ann Fisher
3046 N. 32nd Street, Unit 321
Phoenix, AZ 85018

Michael D. Calmese
3046 N. 32nd Street, Unit 321
Phoenix, AZ 85018

s/David K. Friedland
David K. Friedland

EXHIBIT A

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Michael D Calmese		12/22/2012	INDIVIDUAL: UNITED STATES
RECEIVING PARTY DATA			
Name:	Laura A Fisher		
Street Address:	3046 N. 32nd Street Unit #321		
City:	Phoenix		
State/Country:	ARIZONA		
Postal Code:	85018		
Entity Type:	INDIVIDUAL: UNITED STATES		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2202454	PROVE IT!	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Email:	mcalmese@excite.com		
Correspondent Name:	Michael Calmese		
Address Line 1:	3046 N. 32nd Street #321		
Address Line 4:	Phoenix, ARIZONA 85018		
NAME OF SUBMITTER:	/Michael Calmese/		
Signature:	/Michael Calmese/		
Date:	12/22/2012		
Total Attachments: 2 source=20121222153442#page1.tif source=20121222153442#page2.tif			

OP \$40.00 2202454

TRADEMARK ASSIGNMENT

WHEREAS, MICHAEL D. CALMESE, is the owner of the following registered trademark currently registered in the United States Patent and Trademark Office:

<u>Mark</u>	<u>Registration No.</u>	<u>File Date</u>	<u>Reg. Date.</u>	<u>Status.</u>
PROVE IT!	2,202,454	8/96/96	1998	Live


WHEREAS, on November 19, 2010, adidas America Inc., lost the November 2, 2010 trial seeking cancellation of Michael D. Calmese's registered trademark. See D.C. No. 3:08-cv-00091-BR

WHEREAS, on November 23, 2012 adidas America Inc., lost it's appeal to cancel Michael Calmese's registered trademark. See Ninth Circuit Appeal Case No. 11-35080.

WHEREAS, LAURA ANN FISHER, an Arizona resident, having her address at 3046 N. 32nd Street Unit #321, is desirous of acquiring said registered trademark.

NOW, THEREFORE, in consideration of the sum of \$9,106.50 (Nine Thousand One-Hundred and Six Dollars and Fifty Cents) and other good and valuable consideration, MICHAEL D. CALMESE, hereby assigns to LAURA ANN FISHER, all right, title, and interest in the United States in and to said trademark and registration thereof.

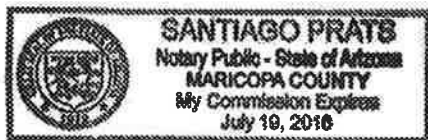
12/22/2012
DATE

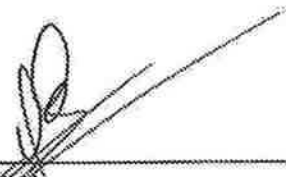

MICHAEL D. CALMESE
by: Michael D. Calmese, Owner

State of Arizona)
) ss
Country of Maricopa)
)

On this 22nd day of December 2012, before me, the undersigned,
personally appeared Michael D. Calmese, known to me to be the person
whose name is subscribed to the within instrument, and acknowledge to me
that he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.





Notary Public

EXHIBIT B

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS 50% OF THE INTEREST AND GOODWILL OF SAID MARK		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
LAURA FISHER		04/08/2013	INDIVIDUAL:
RECEIVING PARTY DATA			
Name:	MICHAEL CALMESE		
Street Address:	3046 N 32ND STREET #321		
City:	PHOENIX		
State/Country:	ARIZONA		
Postal Code:	85018		
Entity Type:	INDIVIDUAL: UNITED STATES		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2202454	PROVE IT!	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	602-954-9518		
Email:	usaproveit@yahoo.com		
Correspondent Name:	MICHAEL CALMESE		
Address Line 1:	3046 N 32ND STREET #321		
Address Line 4:	PHOENIX, ARIZONA 85018		
NAME OF SUBMITTER:	Laura Fisher		
Signature:	s/Laura Fisher/		
Date:	04/08/2013		
Total Attachments: 5			

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TRADEMARK
 REEL: 005000 FRAME: 0969

OP \$40.00 2202454

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TRADEMARK ASSIGNMENT

WHEREAS, LAURA FISHER, is the owner of the following registered trademark currently registered in the United States Patent and Trademark Office:

<u>Mark</u>	<u>Registration No.</u>	<u>File Date</u>	<u>Reg. Date.</u>	<u>Status.</u>
PROVE IT!	2,202,454	8/05/1996	11/10/1998	LIVE

WHEREAS, MICHAEL CALMESE, an Arizona resident, having his address at 3046 N. 32nd Street Unit #321, is desirous of correcting his 12/22/2012 Trademark Assignment No. 900242249 to Laura Fisher for the mark PROVE IT! and retaining 50% interest and ownership of said registered trademark.

WHEREAS, LAURA FISHER and MICHAEL CALMESE both are desirous of correcting and amending the 12/22/2012 Trademark Assignment.

WHEREAS, LAURA FISHER and MICHAEL CALMESE were both surprised to each be informed individually and separately on April 6, 2013 by adidas America Inc's., legal counsel that Michael Calmese's Trademark Assignment assigned the entire interest to Laura Fisher. Attached as Exhibit A, is a true and accurate copy of the April 6th mailing envelopes from adidas' legal counsel to Laura Fisher and Michael Calmese. Obviously, even though Laura Fisher was not named or apart of the adidas America Inc., v. Michael Calmese trial or appeal that was subsequently lost

by adidas America Inc., adidas still felt it was necessary to mail Laura Fisher legal documents regarding the adidas v. Calmese cancellation proceeding No. 92048777.

WHEREAS, MICHAEL D. CALMESE clarifies for this record that he was only supposed to assign 50% of the Trademark Assignment to Laura Fisher on 12/22/2012.

WHEREAS, LAURA FISHER clarifies for this record that her initial goal was to only acquire 50% of said registered trademark and not get attacked, intimidated, sued and/or harassed by adidas or its legal counsel after adidas publically lost a trial were adidas FAILED to prove Calmese committee fraud on the PTO to procure the 1998 federally registered PROVE IT! trademark.

WHEREAS, the Oregon District Court pubic record No. CV-08-00091 and the 9th Circuit Court of Appeals public record Dkt. No. 11-35053 and Dkt. No. 11-35080, all confirm the fact that adidas America Inc., lost the trial and appeal to cancel Michael Calmese's trademark. Finally, on November 21, 2012 the Ninth Circuit Appeals Court affirmed cancellation would not be appropriate, as adidas

apparently did not file a petition for panel rehearing nor did adidas petition the U.S. Supreme Court.¹

NOW, THEREFORE, in consideration of the typographical errors made by Michael Calmese in the 12/22/2012 Trademark Assignment and the sum already paid by Laura Fisher for the 12/22/2012 Trademark Assignment No. 900242249, and other good and valuable consideration, LAURA ANN FISHER, hereby rightfully assigns back to MICHAEL D. CALMESE, 50% of the right, title, and interest in the United States in and to said trademark and registration thereof.

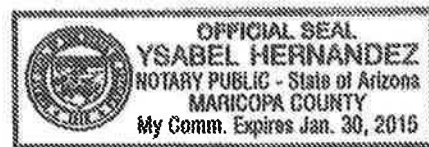
4/8/13

Date

Laura Fisher

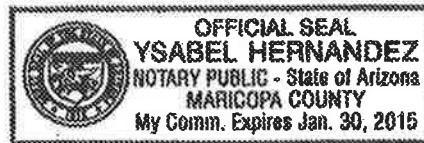
LAURA FISHER

By: Laura Fisher, Owner/Co-owner




¹ The Board should note, only Michael Calmese's appeal Dkt. No 11-35053 and his Malpractice Complaint filed with the Oregon State Bar are still pending.

State of Arizona)
) ss
County of Maricopa)
)



On this 8th day of April 2013, before me, the undersigned, personally appeared
Laura Fisher, known to me to be the person whose name is subscribed to the
within instrument, and acknowledge to me that she executed the foregoing
instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.



Notary Public

EXHIBIT A



FRIEDLAND
VINING

1500 San Remo Avenue • Suite 200
Coral Gables, Florida 33146

Laura Ann Fisher
3046 N. 32nd Street, Unit 321
Phoenix, AZ 85018

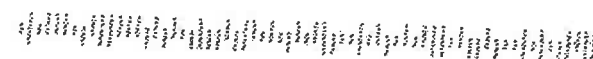
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FIRST-CLASS

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33146
00000252



TRADEMARK

8501866642 0001



FRIEDLAND
VINING

1500 San Remo Avenue • Suite 200
Coral Gables, Florida 33146

Michael Calmese
3046 N. 32nd Street, Unit 321
Phoenix, AZ 85018

\$0.46⁹
US POSTAGE
FIRST-CLASS

071M00804142
33146
00000251



www.usps.com

EXHIBIT C

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF AN UNDIVIDED PART OF ASSIGNOR'S INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
LAURA ANN FISHER		05/03/2013	INDIVIDUAL: UNITED STATES
RECEIVING PARTY DATA			
Name:	MICHAEL D CALMESE		
Trading As:	PROVE IT!		
Street Address:	3046 N 32nd Street Unit 321		
City:	PHOENIX		
State/Country:	ARIZONA		
Postal Code:	85018		
Entity Type:	INDIVIDUAL: UNITED STATES		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2202454	PROVE IT!	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	602-954-9518		
Email:	usaproveit@yahoo.com		
Correspondent Name:	LAURA FISHER		
Address Line 1:	3046 N 32nd Street Unit 321		
Address Line 4:	PHOENIX, ARIZONA 85018		
NAME OF SUBMITTER:	Laura Fisher		
Signature:	s/Laura Fisher/s		
Date:	05/03/2013		

Total Attachments: 6

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TRADEMARK ASSIGNMENT

WHEREAS, LAURA FISHER, is a 50% owner of the following registered trademark currently registered in the United States Patent and Trademark Office:

<u>Mark</u>	<u>Registration No.</u>	<u>File Date</u>	<u>Reg. Date.</u>	<u>Status.</u>
PROVE IT!	2,202,454	8/05/1996	11/10/1998	LIVE

WHEREAS, I LAURA FISHER again, clarify for this record that my initial goal was to only acquire 50% of said registered trademark and not get attacked, intimidated, sued and/or harassed or added to lawsuits initiated by adidas or its legal counsel against Michael Calmese ("Calmese"). Especially, after I learned, from public records, that adidas lost a trial where Calmese had no representation after being represented by adidas' former employee (Anthony McNamer a.k.a. Anthony Davis) and where adidas ultimately FAILED to prove Michael D. Calmese committed

fraud on the United States Patent Trademark Office ("PTO") to procure the 1998 federally registered PROVE IT! trademark.¹

WHEREAS, on April 29, 2013, the Trial Trademark and Appeal Board ("TTAB") ruled to join me Laura Fisher to a Suspended Cancellation Proceeding No.92048777 even though I was not joined to the civil litigation or appeal and in light of the fact that adidas lost the November 2, 2010 trial for cancellation and the subsequent appeal that followed on November 21, 2012, according to public record. I feel I am now unrightfully being called a fraud by adidas after adidas LOST the district court trial by failing to prove fraud against Calmese, according to public record.

WHEREAS, I LAURA FISHER, will not entertain anymore letters or threats from adidas.

WHEREAS, LAURA FISHER is NOT obligated and cannot be obligated or liable for any damages as a result of adidas' litigation with Calmese nor am I obligated to go through the difficult task

¹ Public district court records reveal Calmese represent himself as an attorney pro se litigant after it was discovered and confirmed that Calmese's former attorney Anthony McNamer a.k.a. Anthony Davis was formally employed by adidas.

of dealing with adidas and their highly skilled attorneys who lost the November 2, 2010 trial and their appeal on November 21, 2012, according to public record.

WHEREAS, I LAURA FISHER was threatened by adidas on April 6, 2013, when counsel for adidas sent me legal documents concerning a legal matter I had not been named in. As a result this has stressed me to the point where I do not want or have to fulfill my contractual obligation to retain ownership of Calmese's said trademark for \$9,106.50, in the face of the intimidating April 6, 2013 legal documents sent to me from adidas' legal counsel who can apparently go around accusing people of fraud and not prove it.

WHEREAS, I LAURA FISHER cannot afford to be bothered by huge law firms, like Lott & Friedland now Friedland & Vining or Perkins Coie, who can lose a district court trial and appeal regarding fraud on the PTO with no apparent relief to a defendant, only that the defendant Calmese got to keep his intellectual property.

WHEREAS, I LAURA FISHER soon after the Ninth Circuit Affirmed the November 2, 2010 trial it prompted me to entered into an agreement with Calmese during December of 2012, in regards to a monetary investment as a direct result of Calmese's attorney pro se victory over adidas at the November 2, trial and the fact the adidas lost the appeal that followed on November 21, 2012.

WHEREAS, I LAURA FISHER should not have received the April 6, 2013 legal documents from adidas concerning a "suspended" legal matter to which I was not named.

WHEREAS, MICHAEL CALMESE, an Arizona resident, having his address at 3046 N. 32nd Street Unit #321, **IS NOT** desirous of this May 3, 2013 Assignment, but in light of the intimidating April 6, 2013, legal documents concerning a matter Fisher was not named in and the TTAB dubious decision to add Fisher to a suspended proceeding after a district court and appeals final decision favored Calmese, Calmese is now forced to retain Fisher's 50% interest and ownership of said registered trademark and pay back the \$9,106.50.

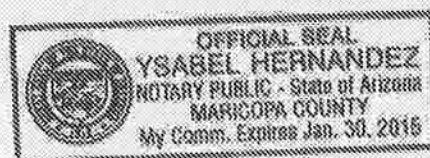
NOW, THEREFORE, in consideration of not wanting to be bothered by adidas with threatening legal action, to which I was not AND will not be named in and as a direct result of the threatening April 6, 2013 mailing of legal documents to me, the sum of \$9,106.50 already paid by Laura Fisher for the 12/22/2012 Trademark Assignment No. 900242249, and other good and valuable consideration will be paid back to me by Calmese, I LAURA ANN FISHER, now, hereby rightfully assigns back to MICHAEL D. CALMESE, 50% of the right, title, and interest in the United States in and to said trademark and registration thereof.

5/3/13
Date

Laura Fisher

LAURA FISHER

By: Laura Fisher



State of Arizona)
) ss
County of Maricopa)
)



On this 3rd day of May 2013, before me, the undersigned,
personally appeared Laura Fisher, known to me to be the person
whose name is subscribed to the within instrument, and
acknowledge to me that she executed the foregoing instrument
for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

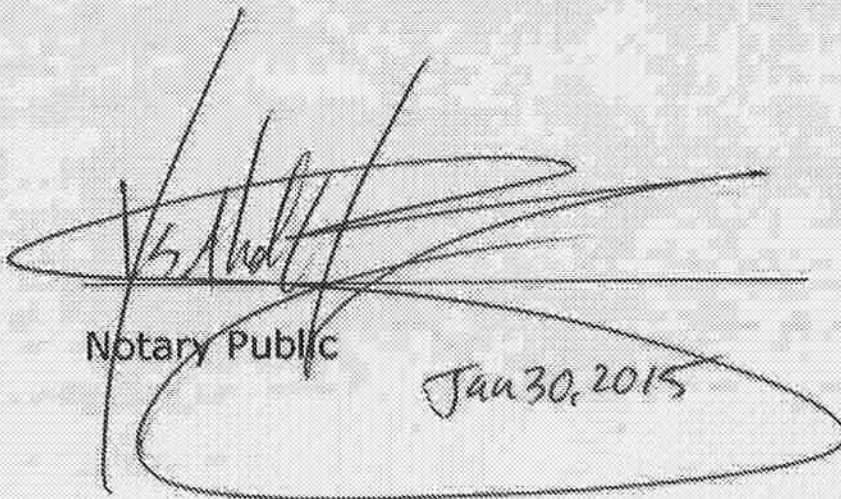

Notary Public
Jan 30, 2015

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ADIDAS AMERICA, INC., a Delaware)
corporation,)

Plaintiff,)

vs.)

MICHAEL D. CALMESE, a resident)
of Arizona,)

Defendants.)

CASE NO.:
3:08-CV-08-91-ST

VIDEOTAPED DEPOSITION OF

MICHAEL D. CALMESE

April 23, 2010

9:15 a.m.

2901 North Central Avenue
Suite 200
Phoenix, Arizona

MICHAEL H. DIPPEL, RPR
Arizona CR No. 50716
Nevada CCR No. 701
California CSR No. 9409

1 the ground. I was diligently trying to get this off the
2 ground in 1997.

3 Q. Now, item No. 3, which has the heading "Initial
4 Business," states, "The corporation initially intends to
5 conduct the business of advertising and promotions of
6 sporting items and events and selling sports gear."

7 A. Yes, sir.

8 Q. Was that accurate at the time?

9 A. That was very accurate at the time and still is
10 today.

11 Q. Now, it says that -- in No. 4 that, "The
12 corporation shall have authority to issue two million
13 shares of common stock," and then, in parentheses, it
14 says, "representing 25 percent of the corporation." Do
15 you see that?

16 A. Yes.

17 Q. Did you ever issue stock in this corporation?

18 A. I don't recall.

19 Q. Item 7 on the second page lists four initial
20 members of the board of directors.

21 A. Uh-huh.

22 Q. Including yourself, your mother, Larry White,
23 and Laura Fisher. Do you see that?

24 A. Yes, I do.

25 Q. Who is Laura Fisher?

1 A. Laura Fisher is my fiancé.

2 Q. And the officers were initially set up as you
3 being the president and CEO, Ms. Fisher as the secretary,
4 and your mom as the vice president; correct?

5 A. That is correct.

6 Q. Did that ever change during the couple of years
7 that Prove It! Sportsgear, Inc. was in existence?

8 A. Well, of course, it changed. You know, it's
9 kind of like a family-run business. You know, Larry is a
10 good friend of mine. Laura is my fiancé. Carolyn is my
11 mother. So, you know, Jeff was a really good friend. So
12 there's a lot of things going on there.

13 Q. Now, by July 28th, 1997, when this document was
14 submitted to the Arizona Secretary of State, was
15 Mr. Pimsner still involved?

16 A. I don't recall.

17 Q. Do you recall when you sued him?

18 A. Sometime back in the '90s.

19 Can I have some water, please?

20 Thank you.

21 Q. Who is Kristofer Halvorson?

22 A. Kristofer Halvorson is an attorney that I
23 believe somebody -- Shannon Butler knew that represented
24 Jeffrey Pimsner in the multiple suits I filed against him.

25 Q. Did he ever represent you?